

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Peter Wodarczyk,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 2:12-cv-3874
	:	
v.	:	
	:	
Soft Pretzel Franchise Systems, Inc.,	:	
d/b/a Philly Pretzel Factory; Ted Fine;	:	
Ron Heil; Gary Nolan	:	
	:	
Defendants.	:	

MEMORANDUM ORDER
DENYING DEFENDANTS' MOTION FOR LEAVE TO AMEND THE ANSWER TO
THE AMENDED COMPLAINT AND DISMISSING PLAINTIFF'S REQUEST TO FILE
A MOTION FOR SUMMARY JUDGMENT AS MOOT

AND NOW, this 20th day of November, 2013:

This is a dispute about whether Defendants infringed Plaintiff's copyright for a photograph that was incorporated into an advertising campaign launched by Defendants. In their previously filed Answer to the Amended Complaint, filed on October 11, 2012, Defendants denied the existence of any agreement between the parties regarding the use of the photograph. (ECF 10). On June 29, 2013, Defendants filed a Motion for Summary Judgment. (ECF 23). After holding a hearing, the Court denied Defendants' Motion and filed an opinion on September 30, 2013. (ECF 46, 47). The Court then set a trial date for December 3, 2013. Over a year after their original Answer to the Amended Complaint was filed, Defendants now seek the Court's leave to amend their Answer to reflect that there was an agreement between the parties regarding the use of the photograph. (ECF 49). Because permitting Defendants to amend their Answer would result in unfair surprise to Plaintiff and would disrupt the trial schedule, Defendants' Motion for Leave to Amend the Answer to the Amended Complaint is **DENIED**.

In Plaintiff's Response to Defendants' Motion for Leave to Amend the Answer to the Amended Complaint, Plaintiff requested leave to file a motion for summary judgment in the event that the Court granted Defendants' Motion. (ECF 51). Because Defendants' Motion is denied, Plaintiff's request to file a motion for summary judgment is **DISMISSED AS MOOT**.

BY THE COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON, U.S.D.J.